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2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 BEFORE THE HONORABLE EDWARD M. CHEN

5 MACCLELLAND, ET AL.,)
6 PLAINTIFFS,)
7 VS.) CASE NO. 21-CV-08592 EMC
8 CELLCO PARTNERSHIP, D/B/A)
9 VERIZON WIRELESS,)
10 DEFENDANT.) SAN FRANCISCO, CALIFORNIA
11) VIA ZOOM VIDEOCONFERENCE
12) THURSDAY, MAY 19, 2022
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12 **TRANSCRIPT OF PROCEEDINGS**

13 **APPEARANCES:**

14 **FOR PLAINTIFF** HATTIS AND LUKACS
15 400 108TH AVE. NE, STE 500
BY: BELLEVUE, WASHINGTON 98004
16 **DANIEL M. HATTIS, ESQUIRE**
CHE CORRINGTON, ESQUIRE

17 DENITTIS OSEFCHEN PRINCE, P.C.
18 5 GREENTREE CENTRE, SUITE 410
525 ROUTE 73 NORTH
19 MARLTON, NEW JERSEY 08057
BY: **STEPHEN DENITTIS, ESQUIRE**

20 **FOR DEFENDANT** QUINN EMANUEL URQUHART & SULLIVAN LLP
21 865 S. FIGUEROA STREET, 10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
22 BY: **CRYSTAL NIX-HINES, ESQUIRE**

23 **MARINA LEV, ESQUIRE**

24 **REPORTED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR**
25 **PRO TEM OFFICIAL COURT REPORTER, USDC**

1 THURSDAY, MAY 19, 2022

2:05 P.M.

3 **THE CLERK:** THE COURT IS CALLING MACCLELLAND, ET AL.
4 VERSUS CELLCO PARTNERSHIP DOING BUSINESS AS VERIZON WIRELESS,
5 CASE NUMBER 21-8592.

6 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR RECORD.

7 **MR. HATTIS:** THIS IS DAN HATTIS FOR PLAINTIFFS, AND
8 I'M JOINED WITH MY COLLEAGUE CHE CORRINGTON, WHO MAY ALSO ARGUE
9 BUT I'LL PRIMARILY BE ARGUING ON PLAINTIFFS.

10 **THE COURT:** ALL RIGHT. THANK YOU, MR. HATTIS.

11 **MR. DENITTIS:** GOOD AFTERNOON, YOUR HONOR. THIS IS
12 STEVE DENITTIS, ALSO ON BEHALF OF PLAINTIFFS.

13 **THE COURT:** THANK YOU, MR. DENITTIS.

14 **MS. NIX-HINES:** GOOD AFTERNOON, YOUR HONOR. CRYSTAL
15 NIX-HINES ON BEHALF OF DEFENDANT, AND WITH ME IS MARINA LEV,
16 WHO WILL ALSO BE ARGUING.

17 **THE COURT:** ALL RIGHT. THANK YOU, MS. NIX-HINES,
18 MS. LEV.

19 LET'S -- I WANT TO SPEND OUR TIME FOCUSING ON A
20 COUPLE OF THE ALLEGED SUBSTANTIVE UNCONSCIONABLY --
21 UNCONSCIONABLE PROVISIONS.

22 ONE IS THE -- WHAT MIGHT BE CALLED AN EXCULPATORY
23 CLAUSE. I'M TRYING TO UNDERSTAND WHAT IT REALLY DOES AND WHAT
24 IT REALLY SAYS. OBVIOUSLY, YOU CAN HAVE AN INTEGRATION CLAUSE,
25 AND THAT'S NOT UNCONSCIONABLE, AND THAT IS, YOU KNOW, ANY PRIOR

1 AGREEMENTS, ET CETERA, ET CETERA, OR REPRESENTATIONS ARE
2 ABSORBED, AND YOU CAN'T HAVE EXTRINSIC OR PAROL EVIDENCE TO
3 CONTRADICT THE CONTRACT, RIGHT? I MEAN, THAT'S A BASIC
4 PROVISION WE FIND COMMONLY. AND I DON'T THINK THERE'S --
5 THAT'S -- THAT DOESN'T AFFECT -- THAT APPLIES WHETHER YOU ARE
6 IN COURT OR WHETHER YOU ARE IN ARBITRATION, IT SEEMS TO ME.

7 I GUESS MY QUESTION IS WHETHER THE CLAUSE IN QUESTION
8 DOES ANYTHING MORE THAN THAT, BECAUSE EVEN THE PAROL EVIDENCE
9 RULE HAS EXCEPTIONS TO IT, AS I UNDERSTAND IT.

10 SO, FOR INSTANCE, THE CLAIM OF FRAUD IN THE
11 INDUCEMENT, IF I'M NOT MISTAKEN, I THINK FRAUD IN THE
12 INDUCEMENT IS A CLAIM THAT CAN BE MADE EVEN IN THE FACE OF AN
13 INTEGRATION CLAUSE UNDER NORMAL CONTRACT LAW. MAYBE SOMEONE
14 CAN CORRECT ME IF I'M WRONG. AM I WRONG ON THAT? IT'S BEEN A
15 WHILE SINCE I TOOK CONTRACTS, BUT THAT'S MY UNDERSTANDING.

16 **MR. HATTIS:** YOUR HONOR, I THINK THAT'S GENERALLY
17 RIGHT. IT'S JUST THE LANGUAGE THAT'S USED HERE SPECIFICALLY,
18 YOU CAN'T RELY ON WHAT'S SAID BY ANY SALES OR CUSTOMER SERVICE
19 REPRESENTATIVES, AND YOU HAVE NO OTHER RIGHTS REGARDING SERVICE
20 PER THIS AGREEMENT.

21 AND KEEP IN MIND, THE AGREEMENT THAT WE'RE TALKING
22 ABOUT, THE WIRELESS AGREEMENT DOESN'T EVEN CONTAIN THE MAIN
23 TERMS, WHICH ARE, LIKE, THE PRICE, THE PLAN, OR ANYTHING LIKE
24 THAT.

25 AND SO THIS APPEARS, JUST ON HOW THIS IS WRITTEN, TO

1 NOT BE JUST AN ATTEMPT AT A -- YOU KNOW, JUST AS TO TIE UP IN
2 TERMS OF AN INTEGRATION CLAUSE, BUT, ACTUALLY, TO PREVENT YOU
3 FROM RELYING ON, YOU KNOW, PRETTY MUCH ANYTHING THAT'S NOT IN
4 THIS AGREEMENT.

5 SO IT SEEMS TO BE -- AT THE VERY LEAST, IT'S AN
6 EXAMPLE OF BAD FAITH TRYING TO TAKE THIS TOO FAR AND,
7 BASICALLY, TO, YOU KNOW, REDUCE THE ABILITY OF PLAINTIFFS TO
8 BRING CLAIMS.

9 **THE COURT:** SO MY QUESTION IS -- AND I THINK YOU'VE
10 ANSWERED IT -- IS I TAKE IT YOUR ARGUMENT IS THAT THIS IS
11 BROADER THAN AN INTEGRATION CLAUSE; IT BARS EVEN THE KINDS OF
12 THINGS THAT COULD COME IN WHEN YOU HAVE AN INTEGRATION CLAUSE.
13 IT'S BROADER THAN AN INTEGRATION CLAUSE. IT WOULD BAR FRAUD IN
14 THE INDUCEMENT AS ONE EXAMPLE.

15 **MR. HATTIS:** YES, YOUR HONOR. THAT'S A GOOD WAY TO
16 PUT IT, THAT IT'S BROADER THAN AN INTEGRATION CLAUSE. AND, I
17 MEAN, IT EVEN SPECIFICALLY SAYS WHAT A SALES OR CUSTOMER
18 SERVICE REPRESENTATIVE SAYS TO YOU, AND THAT'S THE HUGE
19 MAJORITY OF HOW SALES ARE MADE, ARE ON THE PHONE.

20 AND THEN, YOU KNOW, ADDING IN YOU HAVE NO OTHER
21 RIGHTS TO SERVICES JUST SEEMS OVER THE TOP.

22 **THE COURT:** ALL RIGHT. WHAT'S THE DEFENSE RESPONSE
23 THAT THIS IS NOT A, QUOTE, ROUTINE INTEGRATION CLAUSE, BUT
24 SOMETHING BROADER THAN THAT?

25 **MS. NIX-HINES:** THANK YOU, YOUR HONOR. I WANT TO SAY

1 AT THE OUTSET WE DON'T BELIEVE ANY OF THESE UNCONSCIONABLE
2 CLAIMS ARE BEFORE YOU, BECAUSE THE AGREEMENT EXPRESSLY RESERVES
3 QUESTIONS ABOUT ENFORCEABILITY SCOPE TO THE ARBITRATOR.

4 **THE COURT:** RIGHT.

5 **MS. NIX-HINES:** SO WE DON'T THINK YOU EVEN NEED TO
6 REACH THIS ISSUE.

7 **THE COURT:** ALL RIGHT. I UNDERSTAND THE ARGUMENT.
8 LET'S ASSUME FOR A MOMENT I DO REACH IT. I'D LIKE TO HEAR
9 YOUR --

10 **MS. NIX-HINES:** UNDERSTOOD. WE BELIEVE THIS IS A
11 STANDARD INTEGRATION CLAUSE, AND IT DOESN'T IN ANY WAY PRECLUDE
12 ANY OF THE FRAUD CLAIMS OR ALLEGATIONS THAT 1668 IS CONCERNED
13 WITH.

14 I ALSO NOTE THAT THEY HAVE NOT ALLEGED FRAUD. THEY
15 HAVE NOT ALLEGED ANY CONDUCT THAT WOULD EVEN RISE TO THE LEVEL
16 OF FRAUD. THEY DID NOT SEEK PUNITIVE DAMAGES. SO WE DON'T
17 THINK THEY EVEN HAVE HAD ABILITY TO MAKE THIS ASSERTION.

18 BUT, IN ANY CASE, THIS IS A STANDARD INTEGRATION
19 CLAUSE THAT MERELY BINDS VERIZON CUSTOMERS TO THE TERMS OF THE
20 CUSTOMER AGREEMENT, WHICH THEY EXPRESSLY AGREED TO THROUGH THE
21 CLICK-THROUGH PROCESS THAT VERIZON ESTABLISHED.

22 **THE COURT:** ALL RIGHT. ARE THERE ANY OTHER
23 PROVISIONS OR ANYTHING ELSE THAT WOULD ENLIGHTEN ONE BESIDES
24 THE -- THIS PROVISION? IS THERE ANY OTHER SUPPLEMENTARY OR
25 PARTS OF THE AGREEMENT THAT I SHOULD TAKE NOTE OF, OTHER THAN

1 THE CLAUSE THAT SAID, THIS AGREEMENT AND THE DOCUMENTS IT
2 INCORPORATES FORM THE ENTIRE AGREEMENT BETWEEN US, YOU CAN'T
3 RELY, ET CETERA, ET CETERA, THE TWO SENTENCES? IS THERE ANY
4 MORE, OR IS THAT IT?

5 **MR. HATTIS:** REGARDING THAT PARTICULAR ISSUE, YOUR
6 HONOR?

7 **THE COURT:** YES.

8 **MR. HATTIS:** THE CONCEPT? YES, THAT WOULD BE IT.

9 **THE COURT:** OKAY. ALL RIGHT. LET ME GET TO THE,
10 PERHAPS, EVEN MORE INTERESTING ISSUE, THE COORDINATED
11 PROCEEDINGS PROVISION.

12 AND I'D LIKE TO GET THE DEFENSE RESPONSE TO THE
13 PRACTICAL LIMITATION. I MEAN, ONE COULD UNDERSTAND WHY IT
14 WOULD BE DESIRABLE TO HAVE SOME ORDERING AND SOME PROCESS.
15 TYPICALLY, WHAT WE SEE -- AND WE DO THIS ALL THE TIME IN MDL
16 CASES, IS WE'LL DO BELLWETHER SYSTEM, AND -- BUT USUALLY AFTER
17 THE FIRST BELLWETHER YOU THEN GO INTO, YOU KNOW, NEGOTIATIONS,
18 AND THE WHOLE PURPOSE OF THE BELLWETHER IS TO TRY TO STIMULATE
19 A GLOBAL SETTLEMENT.

20 THIS ONE SEEMS DIFFERENT. IT'S NOT JUST A BELLWETHER
21 PROCEEDING. I MEAN, MAYBE IT IS TO TRY TO HELP RESOLVE THE
22 CLAIMS, BUT IF THEY'RE NOT RESOLVED, IF I UNDERSTAND THIS
23 CORRECTLY, THIS TRANCHE OF TEN CONTINUES AS LONG AS IT TAKES TO
24 ADJUDICATE THE CASES. I MEAN, AT SOME POINT IT KIND OF GOES
25 BEYOND BELLWETHER, IT GOES INTO THE WHOLE SHIP.

1 DO I UNDERSTAND THIS PROPERLY, OR DID I MISCONSTRUE
2 HOW THIS THING WORKS?

3 **MS. NIX-HINES:** I THINK YOU'RE RIGHT, YOUR HONOR, IN
4 THE SENSE THAT VERIZON ESTABLISHED THIS CLAUSE TO PROMOTE
5 EFFICIENCY SIMILAR TO OTHER BELLWETHER PROVISIONS, AND THE GOAL
6 IS TO STREAMLINE THE PROCESS SO CASES CAN COME TOGETHER IN
7 GROUPS OF, YOU KNOW, TEN AND BE ADJUDICATED QUICKLY AND
8 EFFICIENTLY.

9 NOW, AS A PRACTICAL MATTER, YOU KNOW, THAT FIRST
10 GROUP WILL BE INSTRUCTIVE, ALTHOUGH VERIZON IS NOT BOUND BY THE
11 DECISION, NEITHER SIDE IS, IT WILL BE A VERY INSTRUCTIVE
12 SETTLEMENT.

13 SO, OBVIOUSLY, THAT'S GOING TO AFFECT HOW THEY
14 APPROACH THE SUBSEQUENT CASES.

15 AND ALTHOUGH, YOU KNOW, PLAINTIFFS RECITE THIS PARADE
16 OF HORRIBLES ABOUT HOW MANY YEARS IT'S GOING TO TAKE, THE
17 REALITY IS ONLY 27 PLAINTIFFS ARE BEFORE YOU. AND IF THERE'S A
18 28TH PLAINTIFF THAT DOESN'T HAVE THE SAME GROUP OF LAWYERS, AND
19 DESPITE WHAT THEY SAY ABOUT BEING ONLY A HANDFUL OF EXPERIENCED
20 PLAINTIFFS' LAWYERS, THERE'S THOUSANDS OF PLAINTIFFS' LAWYERS
21 THEY COULD RETAIN, AND THEY WOULD NOT NECESSARILY BE BOUND BY
22 THE PROCESS. THEY COULD BRING THEIR CLAIM IN INDIVIDUAL
23 ARBITRATION.

24 **THE COURT:** WHAT DO I DO WITH THE REPRESENTATION FROM
25 PLAINTIFFS' COUNSEL THAT THEY REPRESENT 2712 VERIZON CUSTOMERS

1 AND ALL OF THEM WOULD BE COVERED BY THIS, AND IT WOULD TAKE,
2 YOU ASSUME, SEVEN MONTHS PER TRANCHE OF TEN IS 156 YEARS TO GET
3 THROUGH ALL OF THEM?

4 **MS. NIX-HINES:** IT'S PURELY SPECULATIVE, YOUR HONOR.
5 THOSE 2,000 AND SOME, IF THAT'S IS THE CASE, ARE NOT BEFORE YOU
6 TODAY. WHAT'S ONLY BEFORE YOU TODAY ARE THE 27 PLAINTIFFS THAT
7 ARE NAMED PLAINTIFFS THAT ARE PART OF THIS CLASS ACTION, AND
8 THOSE ARE THE ONLY ONES YOU NEED TO CONSIDER AT THIS POINT.
9 SHOULD THERE BE ANY ISSUES WITH THE ARBITRATION -- AND WE DON'T
10 THINK THERE WILL BE BECAUSE IT'S A CAREFULLY CALIBRATED
11 PROCESS.

12 BUT, NONETHELESS, THEY HAVE -- IN PARAGRAPH 6 IT
13 MAKES IT EXPLICITLY CLEAR: THE COURT WILL HAVE AUTHORITY TO
14 ENFORCE THIS CLAUSE AND, IF NECESSARY, TO ENJOIN THE MASS
15 FILING OF ARBITRATION DEMANDS AGAINST VERIZON.

16 IF THEY GO THROUGH THE PROCESS AND THIS PARADE OF
17 HORRIBLES OCCURS, WHICH WE DON'T THINK IT WILL, THEY HAVE THE
18 RIGHT TO COME BACK TO COURT AND SEEK RELIEF.

19 **THE COURT:** LET ME QUESTION YOUR ASSERTION THAT THE
20 ONLY THING I NEED TO BE CONCERNED WITH RIGHT NOW ARE THE 27
21 PEOPLE IN THIS COURTHOUSE OR THIS CASE.

22 MY RECOLLECTION OR UNDERSTANDING OF UNCONSCIONABILITY
23 ANALYSIS IS THAT YOU LOOK AT THE OVERALL IMPACT THAT THE -- I
24 THINK THERE ARE CASES -- I THINK I HAVE SO RULED, AND I HAVEN'T
25 BEEN OVERTURNED, BUT I THINK THERE ARE CASES THAT SAY YOU JUST

1 DON'T LOOK TO WHAT -- YOU LOOK TO WHETHER SOMETHING IS
2 UNCONSCIONABLE EVEN IF IT DOESN'T NECESSARILY DIRECTLY GET
3 IMPLICATED BY THE ONE PLAINTIFF. IT'S NOT YOUR TYPICAL SORT OF
4 STANDING ANALYSIS. YOU HAVE TO LOOK AT UNCONSCIONABILITY FROM
5 A MORE SYSTEMIC VIEW. SO I'M NOT SURE THAT IT'S CORRECT TO SAY
6 WE CAN IGNORE WHAT THE LONG-RUN IMPACT MIGHT BE ON OTHERS.

7 **MR. HATTIS:** YOUR HONOR, MAY I SAY SOMETHING ON THAT
8 POINT?

9 **THE COURT:** YEAH.

10 **MR. HATTIS:** AS YOU'RE SAYING, THE LAW IS THAT THE
11 COURT DETERMINES UNCONSCIONABILITY AT THE TIME THE CONTRACT IS
12 FORMED, AND LIKE YOU SAID, IT'S NOT -- YOU KNOW, IT'S NOT
13 SPECIFIC -- IT'S AN OBJECTIVE STANDARD AND YOU LOOK AT THE
14 TOTALITY.

15 AND, YOU KNOW, IN THIS CASE THE 2,712 AREN'T
16 THEORETICAL. AS MS. NIX-HINES KNOWS, WE SENT A DEMAND LETTER
17 WITH A SPREADSHEET WITH ALL OF THEM. THAT'S BESIDE THE POINT.

18 THE ISSUE IS IT SHOWS HOW THIS REALLY IMPACTS PEOPLE.
19 IT SHOWS IT'S VERY -- YOU KNOW, THAT YOU VERY QUICKLY CAN HAVE
20 SO MANY PEOPLE YOU'LL HAVE A HUNDRED YEARS GO ABOUT BY BEFORE
21 YOU CAN EVEN MAKE YOUR CLAIM.

22 SO I THINK IT'S VERY RELEVANT. IT'S NOT THAT IT'S A
23 PARADE OF HORRIBLES OR IT'S OUTSIDE OF THE AUTHORITY OF THE
24 COURT. IN FACT, THIS VERY MUCH INFORMS THE COURT LOOKING AT IT
25 OBJECTIVELY AS A WHOLE.

1 **MS. NIX-HINES:** YOUR HONOR, IF I MAY RESPOND. I JUST
2 WANT TO POINT OUT THEY BROUGHT THIS AS A CLASS ACTION. THEY
3 CLAIM THAT THERE'S COMMONALITY, THAT THERE'S TYPICALITY, YOU
4 KNOW, THAT THERE'S, YOU KNOW, COMMON ISSUES PREDOMINATE OVER
5 INDIVIDUAL ONES.

6 SO IT'S SORT OF DISINGENUOUS TO THEN BE CONCERNED
7 ABOUT THE FACT THAT, YOU KNOW, THERE'S GOING TO BE A
8 STREAMLINED PROCESS OF LIKE-MINDED CLAIMS. THIS IS A PROCESS
9 THAT GIVES THE VERY CLAIMANTS THAT THEY SAY HAVE SIMILAR CLAIMS
10 AN OPPORTUNITY TO COME FORWARD IN GROUPS TO HAVE THOSE CLAIMS
11 EFFICIENTLY RESOLVED.

12 AND, AS A PRACTICAL MATTER, THOSE INITIAL CASES ARE
13 GOING TO INFORM HOW THE PARTIES HANDLE THE SUBSEQUENT CASES.
14 IT WOULDN'T BE IN ANYBODY'S INTEREST TO DRAG OUT, YOU KNOW, IN
15 GROUPS OF TEN, YOU KNOW, ARBITRATIONS FOR MONTHS ON END. THE
16 WHOLE POINT IS TO GET AN EARLY INDICATION OF THE LEGITIMACY OF
17 THE CLAIMS FROM AN ARBITRATOR, GET A RULING AND THEN, YOU KNOW,
18 LIKELY --

19 **THE COURT:** WELL, EXCEPT THERE'S ONE PROBLEM WITH
20 THAT, MS. NIX-HINES, THIS PROVISION, BECAUSE IT REQUIRES
21 WAITING, TAKES A SUFFICIENT AMOUNT OF LEVERAGE AWAY.

22 LET'S SAY PLAINTIFFS DO WELL. LET'S SAY THE FIRST
23 TWO ROUNDS DON'T GO SO WELL FOR YOUR CLIENT AND THE PLAINTIFFS
24 DO WELL. YOUR CLIENT CAN JUST SIT THERE AND SAY, OKAY, WE'LL
25 DO THE NEXT TEN; OKAY, WE'LL DO THE NEXT TEN AFTER THAT. FIVE

1 YEARS LATER -- I MEAN, PEOPLE ARE GOING TO -- THEY HAVE THE
2 DISADVANTAGED TIME. IF THERE'S A REGULATOR OUT THAT THAT SAYS,
3 YOU CAN ONLY BRING TEN CLAIMS EVERY SEVEN MONTHS AND GET IN
4 LINE, THAT'S A LOT OF LEVERAGE FOR THE PARTY THAT'S --
5 IRRESPECTIVE OF THE MERITS OF HOW THE SO-CALLED BELLWEATHERS GO.

6 THIS IS NOT YOUR TYPICAL BELLWETHER. TYPICAL
7 BELLWETHER IS THE LID IS OFF, YOU COME TO THE TABLE, TO THE
8 BARGAINING TABLE, AND IF YOU DON'T COME TO GRIPS WITH IT, YOU
9 KNOW, ALL THESE SUITS ARE GOING TO BE FILED.

10 ON THE OTHER HAND, YOU KNOW, THE DEFENDANT SAYS,
11 YOU'VE DONE TERRIBLE ON THESE, YOU'RE GOING TO TEST US AGAIN,
12 YOU'RE JUST GOING TO -- YOU'RE GOING TO LOSE.

13 SO THAT'S -- A BELLWETHER IS TO OPEN NEGOTIATIONS,
14 BUT WHEN YOU PUT A REGULATOR OUT THERE ON EVERYTHING ELSE AND
15 BASICALLY SAY, FOR SOME OF YOU PEOPLE THE AVERAGE YOU MAY HAVE
16 TO WAIT FOR THIS PARTICULAR GROUP OF 2,700 PEOPLE IS 78 YEARS,
17 THAT -- YOU GET A DISTORTED NEGOTIATION PROCESS AFTER THAT.
18 THAT'S NOT A TRUE BELLWETHER.

19 **MS. NIX-HINES:** IT WOULD BE JUST THE OPPOSITE, YOUR
20 HONOR, RESPECTFULLY. I MEAN, IF VERIZON LOSES THE FIRST 10 OR
21 THE FIRST 20, IT WOULDN'T BE IN THEIR INTEREST TO DRAG THIS
22 OUT. THEY WOULD WANT TO RESOLVE IT QUICKLY BECAUSE IT'S THE
23 SAME ARBITRATOR VIEWING THE SAME SET OF CASES. THERE'S NO
24 REASON TO THINK THE OUTCOME WOULD BE DIFFERENT FOR THE
25 SUBSEQUENT CASES, SO THERE WOULDN'T BE AN INTEREST IN DRAGGING

1 IT OUT.

2 **MR. HATTIS:** YOUR HONOR, THAT'S NOT HOW THE AAA
3 WORKS. EVERY SINGLE INDIVIDUAL IN THE FIRST TEN, EACH ONE HAS
4 A SEPARATE ARBITRATOR, THEN EVERY SINGLE ONE OF THESE 2,700 ARE
5 GOING TO HAVE A SEPARATE ARBITRATOR, AND IT'S CERTAINLY IN
6 VERIZON'S INTEREST TO KEEP THIS GOING.

7 I MEAN, BASICALLY, YOU CAN ONLY DO 20 ARBITRATIONS A
8 YEAR, SINCE EACH SET OF TEN TAKES ABOUT SEVEN MONTHS.
9 ARBITRATION FEES AT \$3,300 A CASE AND SO FORTH, NOW, INSTEAD OF
10 POTENTIALLY MILLIONS AND MILLIONS OF DOLLARS, THEY ONLY HAVE TO
11 PAY 66,000 A YEAR, AND YOU KNOW, THEY'VE WIPED US OUT. AS YOU
12 SAID, YOUR HONOR, THIS IS COMPLETELY IN THEIR INTEREST.

13 WHAT'S GOING ON HERE, REALLY YOU CAN LOOK AT -- YOU
14 KNOW, IN TERMS OF THE ARBITRATION PROVISION AND THE LAST
15 SENTENCE IN THE MASS ARB PROVISION, IT SAYS A COURT WILL HAVE
16 AUTHORITY TO ENFORCE THIS CLAUSE AND, IF NECESSARY, TO ENJOIN
17 THE MASS FILING, MASS ARBITRATION DEMANDS AGAINST VERIZON.
18 THAT'S WHAT THEY WANT. THEY WANT THAT LOTS OF PEOPLE CAN'T
19 MAKE CLAIMS.

20 THERE'S NOTHING WRONG WITH MASS ARBITRATION. IT'S
21 THE LOGICAL CULMINATION OF THEIR POSITION, HEY, YOU DON'T NEED
22 CLASS ACTIONS, ALL THESE INDIVIDUALS CAN BRING INDIVIDUAL
23 CLAIMS. NOW THEY SAY, NO, YOU CAN'T DO THAT EITHER; IF THERE'S
24 LOTS OF FILINGS, WE CAN GO TO COURT AND PREVENT THAT, TOO.
25 THAT'S WHAT'S GOING ON, AND THEY GAVE IT AWAY RIGHT THERE.

1 MS. NIX-HINES: YOUR HONOR, I MEAN, THIS IS OBVIOUSLY
2 IN RESPONSE TO PLAINTIFFS' LAWYERS LIKE MR. HATTIS AND OTHERS
3 THAT, YOU KNOW, BRING, YOU KNOW, MASS ARBITRATIONS IN ORDER TO
4 GAIN LEVERAGE IN COMPANY IS A REASONABLE RESPONSE. BUT I MEAN,
5 THIS IS A VERY FAIR AND ENFORCEABLE PROVISION. YOU KNOW, THIS
6 IS NOT THE SITUATION WHERE --

7 **THE COURT:** IS THERE ANY PRECEDENT, MS. NIX-HINES?
8 DOES AAA OR JAMS OR INTERNATIONAL ASSOCIATION OF ARBITRATORS,
9 DO THEY HAVE -- IS THIS BARRED FROM SOME PROCESS?

10 **MS. NIX-HINES:** NO. IN FACT, MR. HATTIS, YOU KNOW,
11 TRIED TO REACH OUT TO THE AAA, ALLEGING ALL SORTS OF
12 IMPROPRIETIES, AND THEY DECLINED TO REVIEW THE CLAIM BECAUSE
13 THIS IS THE APPROPRIATE FORUM.

14 AND, REALLY, LIKE THESE CLAIMS SHOULD BE PUT IN FRONT
15 OF THE ARBITRATOR, BECAUSE THE AGREEMENT EXPRESSLY RESERVES THE
16 VERY KIND OF CLAIMS THAT MR. HATTIS IS MAKING TO THE
17 ARBITRATOR.

18 **THE COURT:** I UNDERSTAND THAT. MY QUESTION IS A
19 LITTLE DIFFERENT.

20 DID YOUR CLIENT BORROW THIS MODEL FROM SOME EXISTING
21 INSTITUTIONALIZED PRACTICE SOMEWHERE, OR THIS WAS CREATED BY
22 YOUR CLIENT, BY VERIZON?

23 **MS. NIX-HINES:** IT WASN'T MODELED IN ANY SPECIFIC
24 PRACTICE, YOUR HONOR. OBVIOUSLY, THE BUSINESS COMMUNITY HAS
25 BEEN LOOKING AT WAYS TO ADDRESS THE PHENOMENON OF MASS

1 ARBITRATIONS. BUT UNLIKE SOME OTHERS, YOU KNOW, WHICH
2 MR. HATTIS CITED IN HIS BRIEF, YOU KNOW, THIS IS A VERY FAIR
3 AND REASONABLE APPROACH. VERIZON PAYS ATTORNEY'S FEES. THEY
4 DON'T DICTATE COUNSEL. THEY ALLOW A CONTINUOUS PROCESS SO THAT
5 CLAIMANTS CAN CONTINUE TO BRING ARBITRATIONS, OR THEY CAN GO IN
6 SMALL CLAIMS COURT.

7 **THE COURT:** THERE'S NO OUTSIDE LIMIT. THERE'S NO
8 LIMIT THAT SAYS, NO MATTER WHAT, WE WILL RESOLVE ALL THESE
9 CASES AND GO TO ARBITRATION WITHIN X MONTHS, X YEARS. THERE'S
10 NO GUARANTEE OF AN END DATE.

11 **MS. NIX-HINES:** THERE'S NO GUARANTEE OF AN END DATE,
12 BUT THAT WOULD BE SORT OF IMPOSSIBLE TO ASSUME, BECAUSE,
13 OBVIOUSLY, IT ALSO DEPENDS ON THE AAA'S CASELOAD AND
14 SCHEDULING. BUT IT'S AN ATTEMPT TO STREAMLINE THE PROCESS.
15 IT'S NOT AN ATTEMPT TO BE A LOGJAM. THAT'S WHY THEY DO IT IN
16 SMALL PATCHES.

17 UNLIKE, YOU KNOW, SOME OTHER SYSTEMS, THEY DON'T
18 IMPOSE A DECISION ON THE REST OF THE CLAIMANTS. THAT MIGHT BE
19 A SITUATION WHERE IT WOULD BE UNCONSCIONABLE IF YOU SAY --

20 **MR. HATTIS:** YOUR HONOR.

21 **MS. NIX-HINES:** -- THE OUTCOME OF THE FIRST, YOU
22 KNOW, BATCH OF TEN IS GOING TO THEREFORE CONTROL THE OUTCOME OF
23 THE OTHER CLAIMANTS. VERIZON DID NOT SPECIFICALLY DO THAT.

24 **MR. HATTIS:** YOUR HONOR, SOMETHING THAT'S INTERESTING
25 HERE AND UNIQUE. IT SPECIFICALLY SAYS YOU CAN'T EVEN FILE THE

1 ARBITRATIONS.

2 AND WHAT'S ALSO INTERESTING IN APRIL 2021, WHICH IS
3 WHEN VERIZON ADDED THIS MASS ARBITRATION PROVISION, THAT SAYS
4 YOU CAN'T EVEN FILE THEM UNTIL YOUR GROUP OF TEN COMES UP,
5 WHICH MIGHT BE 150 YEARS, AT THAT VERY SAME TIME THEY ADDED
6 INTO THEIR AGREEMENT THAT THE STATUTE OF LIMITATION APPLIES IN
7 ARBITRATION. WHAT A COINCIDENCE. NOW YOU FIVE YEARS OR TEN
8 YEARS AND YOU'VE LOST THE STATUTE OF LIMITATIONS.

9 I MEAN, THIS IS -- THIS DOESN'T EXIST. THIS IS SO
10 OUT THERE AND SUCH A STRETCH. IT'S ALMOST LIKE THEY ASSIGNED
11 SOME JUNIOR ASSOCIATE TO WRITE AN ARBITRATION AGREEMENT THAT
12 WAS SO ONE-SIDED AND EGREGIOUS, IT'S LIKE JUST MAKE SURE THEY
13 CAN'T DO ANYTHING.

14 **MS. NIX-HINES:** THAT'S ABSOLUTELY FALSE, YOUR HONOR.

15 **THE COURT:** HOLD ON. ONE AT A TIME. LET HIM FINISH,
16 AND I WANT YOUR ANSWER.

17 GO AHEAD, MR. HATTIS.

18 **MR. HATTIS:** I'M DONE. IT'S JUST THE TIMING AND ALL
19 OF THIS JUST SEEMS PRETTY CLEAR THAT ALL OF THIS IS DONE IN BAD
20 FAITH, AND HOW ALL OF THESE WORK TOGETHER IS PERMEATED WITH
21 UNCONSCIONABILITY.

22 **THE COURT:** LET ME ASK, MS. NIX-HINES, IF YOU COULD
23 RESPOND TO THE STATUTE OF LIMITATIONS RUNNING. LET'S SAY
24 SOMEBODY IS ON THE LIST AND IT'S FOUR YEARS, WHAT THEN?

25 **MS. NIX-HINES:** SO PLAINTIFFS ALLEGE THEY HAVE TO PAY

1 THE ADMINISTRATIVE CHARGE EVERY MONTH, INCLUDING THROUGH THE
2 PRESENT. SO THAT MEANS THAT EVERY MONTH RESTARTS THEIR ABILITY
3 TO BRING A DISPUTE TO VERIZON AND BEFORE AN ARBITRATION.
4 THERE'S NO CUTOFF IN THE SENSE THAT THERE'S AN ONGOING ALLEGED
5 VIOLATION, AND, THEREFORE, EACH MONTH TRIGGERS A NEW
6 OPPORTUNITY TO SEND THE NOTICE.

7 **THE COURT:** DO YOU AGREE WITH THAT? DO YOU CONCEDE
8 THAT THAT STATUTE RUNS EVERY TIME THERE'S A NEW START TO THE
9 STATUTE? OR WOULD YOU TAKE THE VIEW THAT THE FIRST OVERT ACT
10 RUNS, AND THERE'S NOT A CONTINUAL ACCRUAL?

11 **MS. NIX-HINES:** WELL, OBVIOUSLY, I MEAN, IT RESTARTS
12 UP UNTIL THE POINT WHERE THERE'S, YOU KNOW, THE ULTIMATE
13 STATUTE OF LIMITATIONS UNDER THE STATUTE. BUT HIS CLAIM IS THE
14 180-DAY NOTICE PROVISION IS UNCONSCIONABLE.

15 **THE COURT:** WE'RE NOT EVEN TALKING ABOUT THAT. IT'S
16 THE CLAUSE THAT SAYS: THE REMAINING CASES WILL NOT BE FILED IN
17 ARBITRATION UNTIL THE FIRST TEN HAVE BEEN RESOLVED. WHAT DOES
18 THAT MEAN? DOES THAT MEAN YOU CAN FILE AFTER THE FIRST TEN
19 HAVE BEEN RESOLVED, EVEN IF YOU'RE LIKE NUMBER 2,000?

20 **MS. NIX-HINES:** THEY'RE GOING TO BE DONE IN BATCHES.
21 AND AS WITH CLASS ACTION WHERE THEY IDENTIFY NAMED PLAINTIFFS
22 HERE, THE PLAINTIFFS' COUNSEL WOULD IDENTIFY THEIR FIVE.
23 VERIZON WOULD IDENTIFY FIVE, AND THE NEXT TEN WOULD PROCEED
24 ACCORDINGLY.

25 **MR. HATTIS:** YOUR HONOR --

1 MS. NIX-HINES: IT'S A SEQUENCE OBVIOUSLY.

2 **THE COURT:** WOULDN'T THE STATUTE RUN IF YOU'RE NOT
3 THE FIRST -- LET'S SAY YOU'RE IN -- YOU HAVE THE UNFORTUNATE
4 SITUATION OF BEING IN A LATER GROUP, AND THAT IT TAKES YOU FOUR
5 YEARS BEFORE YOU GET THROUGH THE BATCHES OF TEN AND THE STATUTE
6 HAS RUN AT THAT POINT. WHAT HAPPENS THEN?

7 MS. NIX-HINES: SO IF YOU LOOK FURTHER DOWN IN
8 PARAGRAPH 6, IT SAYS:

13 THAT IS WHAT IS INTENDED BY THIS PROVISION. OR THEY
14 CAN FILE WITH SEPARATE COUNSEL. THAT IS NOT PART OF THE, YOU
15 KNOW, BELLWETHER PROCEEDING. THAT'S AVAILABLE TO THEM AS WELL.

19 **MS. NIX-HINES:** NO, IT'S DONE IN BATCHES, SO THEY
20 WOULD TO HAVE WAIT UNTIL THAT GROUP OF TEN IS RESOLVED, BUT IT
21 SAYS --

22 **THE COURT:** SO THE STATUTE THEORETICALLY COULD RUN ON
23 SOMEBODY WHO'S IN THE QUEUE AND, UNFORTUNATELY FOR THEM, THEY
24 SERVE IN THE MIDDLE OR THE BACK OF THE QUEUE.

25 MS. NIX-HINES: BY THE EXPRESS TERMS OF PARAGRAPH 6,

1 IT SAYS THE PROCESS MAY CONTINUE UNTIL THE PARTIES ARE ABLE TO
2 RESOLVE ALL OF THE CLAIMS THROUGH ARBITRATION. SO THE INTENT
3 IS THEY WILL ALL EITHER BE ARBITRATED, OR, MORE LIKELY,
4 DEPENDING ON THE OUTCOME OF THE INITIAL CASES, THEY WOULD BE
5 SETTLED. IT'S NOT INTENDED TO BE A BAIT AND SWITCH.

6 **THE COURT:** BUT IT COULD BE -- BUT THE STATUTE COULD
7 RUN. THIS DOESN'T SAY THE STATUTE OF LIMITATIONS IS STAYED
8 PENDING RESOLUTION OF THESE MASS ARBITRATIONS.

9 **MS. NIX-HINES:** I BELIEVE, MS. LEV IS SIGNALING THAT
10 SHE'D LIKE TO CHIME IN.

11 **THE COURT:** ALL RIGHT. MS. LEV.

12 **MS. LEV:** GOOD AFTERNOON, YOUR HONOR.

13 I WANTED TO POINT OUT A COUPLE OF THINGS.

14 FIRST, THIS RELIEF THAT PLAINTIFFS ARE SEEKING WILL
15 BE AVAILABLE TO THEM, POTENTIALLY SEEKING YOUR COUNSEL ON IT,
16 IF AND WHEN ANY SORT OF DELAY ACTUALLY MATERIALIZES. AT THIS
17 MOMENT, YOUR HONOR, THERE ARE 27 PLAINTIFFS BEFORE YOU. I'M
18 NOT RETREADING PREVIOUS GROUND. I WANT TO SAY SOMETHING
19 DIFFERENT.

20 THOSE 27 WOULD BE DONE WITHIN THREE BATCHES. BY
21 PLAINTIFFS' OWN ADMISSION, THAT IS WELL WITHIN ANY CONCEIVABLE
22 STATUTE OF LIMITATIONS FOR ANY OF THESE CLAIMS.

23 **THE COURT:** THAT GOES TO THE QUESTION WHETHER I'M
24 SUPPOSED TO JUDGE AN ARBITRATION PROVISION AND ITS
25 CONSCIONABILITY AT THE TIME THAT IT'S IMPOSED OR CREATED AND

1 GOES INTO EFFECT AND NOT LOOK AT THE SPECIFICS, NECESSARILY,
2 OF, YOU KNOW, WHO'S THERE AND WHO'S GOING TO TAKE ADVANTAGE OF
3 IT, ET CETERA, ET CETERA.

4 **MR. HATTIS:** YOUR HONOR, IT GOES BEYOND THAT --

5 **THE COURT:** WAIT. LET MS. LEV FINISH.

6 **MS. LEV:** THANK YOU, YOUR HONOR.

7 I THINK OUR REQUEST WOULD BE LET US TRY, BECAUSE WE
8 BELIEVE THERE IS NO REASON THIS WOULD DRAG OUT FOR, YOU KNOW,
9 156 YEARS.

10 WE BELIEVE THAT, HAVING BROUGHT THIS ACTION AS A
11 CLASS ACTION IN CONTRAST TO, FOR EXAMPLE, THE, YOU KNOW,
12 AMENDED COMPLAINT IN THE GRUBHUB OPINION THAT YOUR HONOR
13 OFFERED RECENTLY, THIS IS A DIFFERENTLY SITUATED CASE. THIS IS
14 A CASE WHERE THEY'RE CLAIMING, LOOK, EVERYBODY HERE IS SITUATED
15 IN THE SAME WAY. TO THEN SUGGEST THAT WITHIN EVEN ONE ROUND OF
16 TEN, LET ALONE THREE, YOU DO NOT BEGIN TO ACHIEVE A COMMON END?
17 THAT'S DISINGENUOUS.

18 NOW, YOU'RE SUGGESTING, MR. HATTIS, THAT VERIZON
19 WOULD SOMEHOW BE INCENTIVIZED TO CONTINUE THIS AD INFINITUM.
20 LET ME ADDRESS BRIEFLY WHY THAT'S NOT THE CASE.

21 WERE VERIZON NOT TO PREVAIL ON AN INJUNCTIVE PORTION
22 OF THIS, IT'S NOT JUST -- YOU KNOW, THEY'RE NOT SEEKING REFUNDS
23 FOR ADMIN PERIOD, FULL STOP. THEY'D LIKE A REVAMP OF VERIZON'S
24 ADVERTISING PRACTICES, ESSENTIALLY. THAT'S AN EXPENSIVE
25 UNDERTAKING, YOUR HONOR. IF YOU HAVE A DIFFERENT NOTICE THAT

1 YOU GIVE TO A PARTICULAR CLIENT, THAT'S NOT SOMETHING YOU CAN
2 DO ON AN AD HOC BASIS FOR ONE CLIENT.

3 SO FOR VERIZON IT WOULDN'T JUST BE YOU'RE LOSING 195
4 PER PERSON AS THEY'RE SUGGESTING. IT MEANS THAT IT
5 MEANINGFULLY INFORMS VERIZON'S BUSINESS DECISIONS WHETHER THEY
6 WIN OR LOSE THOSE --

7 **THE COURT:** I ASSUME THIS IS WRITTEN IN A WAY THAT
8 THE ARBITRATOR DOES NOT HAVE THE ABILITY TO ISSUE CLASS-WIDE
9 INJUNCTIVE RELIEF, CORRECT?

10 **MR. HATTIS:** CORRECT.

11 **MS. LEV:** CORRECT.

12 **THE COURT:** IF THEY WIN, QUOTE, INJUNCTIVE RELIEF
13 INDIVIDUALLY, IT SEEMS TO ME ALL IT TAKES IS VERIZON SENDS A
14 LETTER TO THOSE TEN PEOPLE SAYING, HEY, HERE'S THE DEAL.
15 WHAT'S SO HARD ABOUT THAT?

16 **MS. LEV:** WHAT THEY'RE ASKING FOR IN THEIR COMPLAINT
17 ON THE PRIVATE INJUNCTIVE RELIEF COMPONENT OF IT IS THAT THE
18 CUSTOMER BILLS REFLECT DIFFERENT THINGS, AND THOSE CUSTOMER
19 BILLS CANNOT BE DONE ON AN AD HOC BASIS.

20 SO MY POINT IS JUST --

21 **THE COURT:** WHY NOT? IF IT'S ONLY TEN OF THEM LEFT.

22 **MS. LEV:** AS A BUSINESS PRACTICE, YOU HAVE TO HAVE A
23 COMMON APPROACH TO HOW YOU CHARGE THE ADMINISTRATIVE FEE.

24 **MS. NIX-HINES:** IF YOU LOOKED AT THE PRAYER FOR
25 RELIEF, YOUR HONOR, IT'S VERY BROAD WHAT THEY'RE SEEKING, AND

1 THAT WOULD BE EXPENSIVE TO IMPLEMENT.

2 **THE COURT:** ALL RIGHT. SO YOU'RE SAYING, AS A
3 PRACTICAL MATTER, YOU PROBABLY WON'T NEED THIS PROCEDURE. IN
4 OTHER WORDS, YOU COULD HAVE WRITTEN A PROCEDURE THAT SAID, ALL
5 RIGHT, AFTER THE FIRST TWO BELLWETHERS, WE'LL OPEN IT UP, AND
6 IT WOULD MAKE NO DIFFERENCE TO VERIZON, AS A PRACTICAL MATTER.

7 **MS. LEV:** YES. AS A PRACTICAL MATTER, IT COULD BE.

8 **THE COURT:** COULD BE.

9 **MS. LEV:** YES.

10 **MS. NIX-HINES:** YOUR HONOR, I DO -- I KNOW YOU'RE
11 EXPLORING THESE ISSUES, BUT I AM -- I DO WANT TO COME BACK TO
12 THE FACT THAT THE BARGAIN FOR AGREEMENT THAT THE PARTIES
13 ENTERED INTO IS ALL OF THESE CHALLENGES WOULD BE DONE BY THE
14 ARBITRATOR.

15 **THE COURT:** I KNOW. I KNOW THERE'S A LAW ABOUT
16 WHETHER YOU LOOK AT THE -- WHETHER IT'S A SOPHISTICATED PARTY
17 OR NOT. WE'RE FAMILIAR WITH THAT LAW. I UNDERSTAND THE
18 ARGUMENTS.

19 **MS. NIX-HINES:** ACTUALLY, I WAS GOING TO POINT YOU TO
20 THE FACT THAT THE AGREEMENT EXPRESSLY INCORPORATES THE AAA'S
21 CONSUMER ARBITRATION RULES.

22 **THE COURT:** YES.

23 **MS. NIX-HINES:** THE NINTH CIRCUIT CLEARLY HELD THE
24 INCORPORATION OF AAA RULES -- IN THAT CASE IT WAS THE CONSUMER
25 ARBITRATION RULE, 14 (A), WHICH PROVIDES THAT THE ARBITRATOR

1 SHALL HAVE THE POWER TO RULE IN HIS OR HER JURISDICTIONS,
2 INCLUDING ANY OBJECTIONS WITH RESPECT TO THE EXISTENCE, SCOPE,
3 OR VALIDITY OF THE ARBITRATION AGREEMENT OR TO THE
4 ARBITRABILITY OF ANY CLAIM OR COUNTERCLAIM.

5 AND THE NINTH CIRCUIT HAS SAID IN *BRENNAN* THAT, YOU
6 KNOW, INCORPORATING AAA RULES CONSTITUTES CLEAR AND
7 UNMISTAKABLE EVIDENCE THAT CONTRACTING PARTIES AGREE TO
8 ARBITRATE ARBITRABILITY.

9 **THE COURT:** RIGHT. BUT THE COURT ALSO LEFT OPEN THE
10 QUESTION WHETHER THE HOLDING APPLIES IN THE CONTEXT OF, QUOTE,
11 UNSOPHISTICATED PARTIES, AND THAT'S WHERE YOU'VE GOTTEN A RANGE
12 OF DECISIONS FROM THE DISTRICT COURTS, RIGHT?

13 **MS. NIX-HINES:** WELL, *BRENNAN* GOES ON TO SAY *ORACLE*
14 *AMERICA V. MYRIAD GROUP* -- THAT'S AT 74 F.3D 1069, A NINTH
15 CIRCUIT CASE IN 2013, WHERE THEY SAY:

16 "WE HAVE OBSERVED THAT VIRTUALLY
17 EVERY CIRCUIT TO HAVE CONSIDERED THE ISSUE
18 HAS DETERMINED THAT INCORPORATION OF THE AAA
19 ARBITRATION RULES CONSTITUTES CLEAR AND
20 UNMISTAKABLE EVIDENCE THAT THE PARTIES AGREED
21 TO ARBITRATE ARBITRABILITY."

22 NONE OF THESE SPEECHES -- OR EVEN IF YOU FIND THEM,
23 YOU KNOW, LEGITIMATE CLAIMS SHOULD BE DECIDED BY YOUR HONOR.
24 THEY BELONG --

25 **THE COURT:** YOU DISAGREE WITH JUDGE GONZALEZ, JUDGE

1 ALSUP AND VARIOUS OTHERS, INCLUDING MYSELF, OF THIS COURT WHO
2 HAVE FOUND THAT THERE IS A LINE, THAT YOU DO LOOK AT THE
3 SOPHISTICATION OF THE PARTIES TO DETERMINE WHETHER THE AAA
4 RULES, JUST CITING THE AAA RULES, IS SUFFICIENT TO BE A CLEAR
5 AND UNMISTAKABLE AGREEMENT TO ARBITRATE ARBITRABILITY.

6 **MS. NIX-HINES:** YOUR HONOR, EVEN IF YOU LOOK AT THE
7 SOPHISTICATION OF THE PARTIES, I MEAN, THIS IS NOT A CASE WHERE
8 IT WAS IN SMALL FINE PRINT IN THE BACK OF SOME, YOU KNOW,
9 20-PAGE AGREEMENT THAT THEY OFTEN JUST CLICK ON. THIS WAS A
10 VERY CLEAR CLICK-THROUGH AGREEMENT. IT'S STATED IN MULTIPLE
11 CASES IN BOLD TYPE, DIFFERENT COLOR, THAT THEY WERE AGREEING TO
12 ARBITRATE, THAT THEY WERE WAIVING THEIR RIGHT TO A JURY, AND
13 ALL OF THAT IS VERY CLEARLY LAID OUT.

14 EVEN IF YOU WERE, YOU KNOW, NOT A SOPHISTICATED
15 CONSUMER, THE FACT YOU HAVE TO CLICK ON EACH ONE OF THOSE AND,
16 AGREE AND ACCEPT, IT'S IN BOLD LANGUAGE, THAT IS CERTAINLY THE
17 CASE THAT, YOU KNOW, THEY WERE CLEARLY PUT ON NOTICE THAT THIS
18 IS WHAT THEY WERE -- YOU KNOW, THE AGREEMENT THAT THEY WERE
19 ENTERING INTO.

20 SIGNIFICANTLY, YOU KNOW, THE PLAINTIFFS HAVE NOT
21 DISPUTED THIS IS A VALID ARBITRATION AGREEMENT, OR THAT THE
22 ARBITRATION AGREEMENT APPLIES TO THEIR CLAIMS. THERE WOULD BE
23 NO BASIS TO DO SO.

24 **THE COURT:** I'LL GIVE YOU A BRIEF CHANCE TO RESPOND,
25 MR. HATTIS, AND I'M GOING TO TAKE THE MATTER UNDER SUBMISSION.

1 **MR. HATTIS:** YOU DON'T EVEN HAVE TO GET THERE, YOUR
2 HONOR, BECAUSE THE THRESHOLD ISSUE IS THAT THE CONSUMER CAN
3 CHOOSE, IT SAYS, ANY AGREEMENT BETWEEN THE AAA RULES AND BBB
4 RULES, WHICH THEY GO OUT OF THEIR WAY TO NOT POINT IT OUT IN
5 THEIR BRIEF. AND IT SAYS ANY CLAIM FOR LESS THAN \$10,000 YOU
6 CHOOSE. GUESS WHAT? THE BBB RULES DON'T HAVE A DELEGATION
7 CLAUSE, NOT THERE. IT DOESN'T EXIST. SO THERE'S NO POSSIBLE
8 WAY THERE COULD BE ANY CLEAR AND UNMISTAKABLE DELEGATION,
9 BECAUSE ONE OF THE TWO OPTIONS THAT CAN BE CHOSEN DOESN'T HAVE
10 A DELEGATION CLAUSE. YOU DON'T EVEN HAVE TO GO THERE.

11 **THE COURT:** ALL RIGHT. I'LL TAKE THE MATTER UNDER
12 SUBMISSION. THANK YOU. I APPRECIATE IT.

13 **MS. NIX-HINES:** THANK YOU, YOUR HONOR.

14 **THE CLERK:** LET ME ASK ABOUT -- WE HAVE A STATUS
15 CONFERENCE SCHEDULED. OBVIOUSLY, IT WOULD BE IMPACTED. LET ME
16 ASK ABOUT ADR. IT SAYS IN THIS STATUS CONFERENCE STATEMENT
17 THAT PARTIES ARE AMENABLE TO PRIVATE MEDIATION AT THE
18 APPROPRIATE TIME. I GUESS MY QUESTION IS, WHAT IS THE
19 APPROPRIATE TIME?

20 **MS. LEV:** PART OF OUR POSITION, YOUR HONOR, HAS BEEN,
21 YOU KNOW, THAT WE'D ASK THAT YOU STAY THE PROCEEDINGS PENDING
22 THE RESOLUTION OF OUR MOTION TO COMPEL ARBITRATION, AND SO THAT
23 MIGHT INFORM TIMING IN THAT RESPECT.

24 **MS. NIX-HINES:** YOU MIGHT JUST HIGHLIGHT THE SUPREME
25 CASE, TOO, MS. LEV.

1 **MS. LEV:** I'M SORRY?

2 **MS. NIX-HINES:** YOU MIGHT CITE THE SUPREME COURT CASE
3 AS WELL, *VIKING RIVER*.

4 **MS. LEV:** YES. SO ONE OF THE CONSIDERATIONS, YOUR
5 HONOR, IS -- OF COURSE, YOUR HONOR'S DOUBTLESS AWARE OF *VIKING*
6 RIVER IS CURRENTLY PENDING BEFORE THE SUPREME COURT. ARGUMENT
7 HAS ALREADY BEEN HELD ON MARCH 30TH. AND AS ANYBODY WELL
8 VERSED IN SUPREME COURT PRACTICE, WHICH, OF COURSE,
9 MS. NIX-HINES VERY MUCH IS, WILL TELL YOU THEY ARE GOING TO
10 HAND DOWN A DECISION PRIOR TO EARLY JULY. WE DON'T HAVE TOO
11 MUCH LONGER TO WAIT.

12 BUT IT WILL DOUBTLESS INFORM YOUR CONSIDERATIONS ON
13 THIS MOTION TO COMPEL, YOUR HONOR, BECAUSE, TO THE EXTENT THAT
14 PLAINTIFFS ARE GOING TO HANG THEIR HAT IN ANY WAY ON THE MCGILL
15 RULE, THE ISKANIAN RULE WITHIN CALIFORNIA IS AN ANALOGOUS
16 CONCEPT, AND MCGILL VERY WELL MAY BE IMPACTED BY THE SUPREME
17 COURT'S RULING.

18 **THE COURT:** SO IN OTHER WORDS, TO GET BACK TO MY
19 QUESTION, IS YOU'RE NOT INTERESTED IN PRIVATE MEDIATION YET.

20 **MS. NIX-HINES:** NOT AT THIS TIME.

21 **MS. LEV:** NO, YOUR HONOR.

22 **MS. NIX-HINES:** YOU KNOW, WE WOULD REQUEST, THOUGH,
23 THAT YOU ISSUE A STAY PENDING YOUR ADJUDICATION OF OUR MOTION
24 TO COMPEL, AND, OBVIOUSLY --

25 **THE COURT:** WHAT'S GOING TO HAPPEN IN THE NEXT, LET'S

1 SAY, MONTH AND A HALF IN THIS CASE IF I DON'T ISSUE A STAY?

2 **MS. LEV:** PLAINTIFFS HAVE, YOU KNOW, SOUGHT INITIAL
3 DISCLOSURES WITHIN 11 DAYS, YOUR HONOR, AND WE THINK THAT'S
4 PREMATURE PENDING THE RESOLUTION OF THE MOTION.

5 **MR. HATTIS:** WELL, INITIAL DISCLOSURES, ISN'T THAT
6 THE KIND OF THING, WHETHER YOU GO TO ARBITRATION OR WHETHER YOU
7 GO TO COURT, IT SEEMS LIKE A VERY MINOR EVENT.

8 **MS. NIX-HINES:** WITHOUT A STAY, YOUR HONOR, THEY MAY
9 PURSUE DISCOVERY.

10 **THE COURT:** THAT'S WHY I ASKED WHAT'S GOING TO
11 HAPPEN. IF IT'S JUST DISCLOSURES, I COULD SAY, WHICH I OFTEN
12 DO, ALL RIGHT, I'M GOING TO ISSUE A PARTIAL STAY, DO YOUR
13 INITIAL DISCLOSURES, MAYBE START PREPARING, GET READY FOR YOUR
14 INTERROGATORIES AND STUFF, BUT DON'T PROMULGATE IT OR YOU
15 PROMULGATE IT, BUT IT WON'T BE ANSWERABLE UNTIL I LIFT THE
16 STAY, YOU KNOW, JUST SO WE DON'T NECESSARILY LOSE ALL THE TIME.
17 BUT ON THE OTHER HAND, THERE'S NOT MUCH -- THE STAY IS TO
18 PREVENT ANY BURDEN THAT BECOMES OBLIVIATED.

19 SO WHY NOT, IN OTHER WORDS, HAVE THE PARTIES DO THEIR
20 INITIAL DISCLOSURES DURING THE NEXT -- YOU KNOW, UNTIL I RULE.
21 NOW, OF COURSE, I MAY END UP RULING SOON OR I MAY WAIT UNTIL
22 VIKING COMES DOWN. BUT, IN ANY EVENT, IT WON'T TAKE THAT LONG.

23 THAT'S WHY I ASK, FOR THE NEXT 90 DAYS OR SO, WHY
24 NOT, FOR INSTANCE, DO YOUR INITIAL DISCLOSURES MAYBE -- YOU
25 KNOW, SEE WHAT HAPPENS AT THAT POINT, AND THEN WE GET TOGETHER

1 IN ANOTHER 60 DAYS.

2 **MS. NIX-HINES:** THAT WOULD BE ACCEPTABLE, YOUR HONOR.

3 **MS. LEV:** YES, YOUR HONOR.

4 **MS. NIX-HINES:** JUST LIMITED TO INITIAL DISCLOSURES,
5 YES.

6 **MS. LEV:** I WANTED TO CLARIFY ONE POINT VERY QUICKLY.
7 WHEN WE PREVIOUSLY SPOKE ABOUT THE POTENTIAL BURDEN ON
8 VERIZON -- AND ONLY BECAUSE I THINK IT MAY INFORM YOUR HONOR'S
9 REASONING HERE -- AS TO WHAT MIGHT HAPPEN IN ONE OF THESE
10 BELLWETHER CASES, I ONLY REFER YOU TO -- IN THE PRAYER FOR
11 RELIEF, SECTION 5, WHERE THE PRIVATE INJUNCTIVE RELIEF STATES
12 PLAINLY THAT THEY'RE SEEKING REVISION OF ALL OF VERIZON'S
13 CUSTOMER BILLS. SO IT'S NOT JUST PER PERSON, AND I JUST WANTED
14 TO MAKE THAT CLEAR, YOUR HONOR.

15 **THE COURT:** I THINK THE ARBITRATOR DOESN'T HAVE THE
16 ABILITY TO DO THAT, RIGHT?

17 **MS. LEV:** WELL, IT DEPENDS ON HOW THEY SEEK IT.

18 **THE COURT:** WHAT'S THAT?

19 **MS. LEV:** IT DEPENDS ON HOW THEY SEEK IT.

20 IN ANY EVENT, YOUR HONOR, I WANTED TO POINT OUT YOUR
21 PROPOSAL FOR, YOU KNOW, ONLY INITIAL DISCLOSURES WORKS IN LIGHT
22 OF THAT.

23 **THE COURT:** ALL RIGHT. I'M GOING TO STAY THE CASE
24 UNTIL I RULE, BECAUSE IT'S SUCH -- IT WILL HAVE SUCH AN IMPACT
25 ON WHERE THIS CASE GOES, BUT I WILL ALLOW THE PROCESS OF

1 INITIAL DISCLOSURES TO GO FORWARD.

2 WHY DON'T WE RECONVENE IN 60 DAYS FOR A STATUS
3 CONFERENCE, SINCE I'M NOT REALLY HOLDING STATUS CONFERENCES AT
4 THIS POINT, AND THEN SEE WHERE WE'RE AT.

5 VICKY, THAT WOULD --

6 **THE CLERK:** JULY 26TH, YOUR HONOR, AT 2:30.

7 **THE COURT:** JULY 26 AT 2:30. ALL RIGHT.

8 **MS. NIX-HINES:** THANK YOU, YOUR HONOR.

9 **THE COURT:** APPRECIATE IT. THANK YOU.

10 **MR. HATTIS:** THANK YOU, YOUR HONOR.

11 (PROCEEDINGS ADJOURNED AT 2:41 P.M.)

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1 STATE OF CALIFORNIA)
2) SS
3 COUNTY OF CONTRA COSTA)
4

5 I HEREBY CERTIFY THAT THE FOREGOING IN THE WITHIN-ENTITLED
6 CAUSE WAS TAKEN AT THE TIME AND PLACE HEREIN NAMED; THAT THE
7 TRANSCRIPT IS A TRUE RECORD OF THE PROCEEDINGS AS REPORTED BY
8 ME, A DULY CERTIFIED SHORTHAND REPORTER AND A DISINTERESTED
9 PERSON, AND WAS THEREAFTER TRANSCRIBED INTO TYPEWRITING BY
10 COMPUTER.

11 I FURTHER CERTIFY THAT I AM NOT INTERESTED IN THE OUTCOME
12 OF THE SAID ACTION, NOR CONNECTED WITH, NOR RELATED TO ANY OF
13 THE PARTIES IN SAID ACTION, NOR TO THEIR RESPECTIVE COUNSEL.

14 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 30TH
15 DAY OF MAY, 2019.

16
17 
18

19 JOAN MARIE COLUMBINI, CSR NO. 5435
20 STATE OF CALIFORNIA
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